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# FIFTH REPORT ON RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (SECOND PART OF THE TOPIC)*

by

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# I. INTRODUCTION

1. At its forty-first session, the International Law Commission devoted one meeting to considering the topic entitled "Relations between States and international organizations (second part of the topic)". Owing to lack of time, however, the Commission was unable to study the fourth report of the Special Rapporteur. 1/ The Commission thought it advisable for the Special Rapporteur to introduce his report in order to facilitate work on the topic at its next session. 2/

2. At the Commission's 2133rd meeting, on 7 July 1989, the Special Rapporteur introduced the fourth report, which is reproduced in the report submitted to the General Assembly on the work of the Commission's forty-first session. 3/

3. Resolution 44/35, adopted by the General Assembly at its 72nd plenary meeting, on 4 December 1989, recommends that the Commission should continue its work on the topics in its current programme.

4. The present report consists of two parts. The first part supplements part III of the draft articles and refers to the archives of international organizations.

5. The second part refers to part IV of the draft articles and concerns the publications and communications of international organizations.

# II. ARCHIVES

## A. Presentation of the topic

6. Like States, international organizations are in permanent communication with member States and with each other. They maintain a steady correspondence with public and private institutions and private individuals. They keep files on their staff, on projects, on studies and on any other action in which they may be involved with a view to achieving the aims for which they were created. Lastly, they possess a body of documentation which is the backbone of their operations.

7. The protection and safekeeping of all this documentation is what constitutes the archives of international organizations. In order to preserve, protect and safeguard the confidentiality of these archives and to protect not only their own safety and their right to privacy and private property but also the safety and

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1/ A/CN.4/424.

2/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10), para. 706.

3/ Ibid., paras. 708 ff.

privacy of documentation addressed or entrusted to them, particularly by member States, international intergovernmental organizations must enjoy inviolability of their archives.

8. Like States, international organizations are subjects of international law and therefore enjoy inviolability of their archives.

9. For States, the inviolability of archives is closely linked to the inviolability of diplomatic premises. This principle is enshrined in article 24 of the 1961 Vienna Convention on Diplomatic Relations, 4/ which provides that:

> "The archives and documents of the mission shall be inviolable at any time and wherever they may be."

10. Likewise, the inviolability of the archives of international organizations is closely linked to the inviolability of the premises occupied by those organizations. The Convention on the Privileges and Immunities of the United Nations 5/ expands on the principle of the inviolability of archives when it provides, in its article II, section 4, that:

> "The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located."

11. We are thus talking about not only all the Organization's own documents but also those held by it, in other words those in its safekeeping.

12. The concept of the archives of international organizations has been spelt out in a number of international instruments concluded by some international organizations, in particular in the Agreement signed between the Government of Chile and the Economic Commission for Latin America (ECLA) 6/ on 15 February 1953 concerning the Commission's headquarters at Santiago. Article I, section 1 (g), of that Agreement states that the expression "archives of ECLA" means the records, correspondence, documents, manuscripts, photographs, cinematograph films and sound recordings, belonging to or held by ECLA. 7/

13. The Vienna Convention on Consular Relations of 1963 8/ adopts a similar definition in its article 1 (k), defining as consular archives "all the papers,

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4/ United Nations, Treaty Series, vol. 500, p. 95.

5/ General Assembly resolution 22 A (I).

6/ Now known as the "Economic Commission for Latin America and the Caribbean".

7/ United Nations Legislative Series (ST/LEG/SER.B/10), p. 218.

8/ United Nations, Treaty Series, vol. 596, p. 261.

documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping".

14. The Committee of Ministers of the Council of Europe has adopted the above definition, 9/ and article 31 of the Regulation of the Commission of the European Communities of 1 July 1969 on mail and archives defines archives as comprising files and collections.

15. The issue, then, is one of protecting not only secrecy but also the place where the secret is kept. In the case of diplomatic and consular missions, the receiving State is under an obligation not only to refrain from trying to penetrate the secret but also to protect it by respecting the place where it is kept and even to prevent third parties from violating it. This is the right to secrecy defined by Professor Paul Reuter, in a famous article on the problem, when he says that there can be no personality or freedom without some degree of privacy, some private life, without a protective screen which hides a number of secrets from the public eye. 10/

16. Article 24 of the Vienna Convention on Diplomatic Relations refers only to the inviolability of archives and makes no mention whatsoever of the receiving State's obligation to protect them against third parties. However, it has always been tacitly understood that the customary rule whereby the receiving State is bound to protect the archives of a mission remains in force (article 14 (d) of the 1928 Havana Convention regarding Diplomatic Officers). 11/ Article 5 of the draft articles drawn up by Harvard Law School also provides that: "A receiving State shall protect the archives of a mission from any violation and shall safeguard their confidential character, wherever such archives may be located within territory of the receiving State". 12/

17. This duty to protect can clearly be inferred from the Commission's commentary to the article on the inviolability of archives in the Vienna Convention on Diplomatic Relations. 13/

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9/ Council of Europe, Privilèges et immunités des organisations internationales (Strasbourg, 1970), p. 29.

10/ Paul Reuter, Le droit au secret et les institutions internationales. Annuaire français de droit international, 1956, 53, p. 60.

11/ League of Nations, Treaty Series, vol. CLV, p. 259.

12/ Quoted by Phillipe Cahier, Le droit diplomatique contemporain, p. 209, reference No. 51.

13/ Yearbook of the International Law Commission, 1958, vol. II, Report of the International Law Commission on the work of its tenth session, document A/3859, chap. III, para. 53, art. 22.

18. Professor Paul Reuter, in his article, goes a step further by establishing a close relationship between autonomy, a prerequisite for the proper functioning of an international organization, and the right to privacy. He says that a certain right to privacy also gives recognition to the autonomy of the group; without privacy there can be no freedom, without freedom there can be no autonomy. 14/

19. There does not seem to be any valid reason for not applying this rule to the archives of international organizations.

20. The question was raised whether there was any need for a separate article on the inviolability of archives in the Vienna Convention on Diplomatic Relations. 15/ It was, in fact, argued that, since diplomatic premises were inviolable, the inviolability of their archives was automatically guaranteed. Both the International Law Commission and the Vienna Conference on this question took the view that a separate provision was necessary since the case might arise, and has in fact arisen, where the archives of a mission were not located, even if only temporarily, on the premises occupied by the mission. What we have here is a special duty of oversight and protection. 16/

21. This inviolability is absolute, for it continues to apply to diplomatic missions even in the event of war or the break-off of diplomatic relations. There are a number of legal precedents for this which have come to be viewed as typical. The first concerns the archives of the former Imperial Russian Legation at Berne. When diplomatic relations were broken off between the Soviet and Swiss Governments, the Swiss authorities placed the archives of the Imperial Russian Legation under seal and refused to open them to individuals wishing to consult them for the benefit of private interests. 17/

22. The principle of the inviolability of archives has at times been disregarded, but only rarely. The most serious cases recorded in the legal literature have been the violation of the Apostolic Nunciature in Paris by the French authorities and the violation of the British Embassy in Petrograd by the Soviet Government. The first of these violations consisted in the search by the French authorities of the archives of the Apostolic Nunciature in Paris on 11 December 1906, after the severance of diplomatic relations between the Holy See and France on 30 July 1904. The second was committed by the Soviet Government in 1918.

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14/ P. Reuter, op. cit., p. 61.

15/ See P. Cahier, op. cit., p. 20.

16/ Cf. Charles Rousseau, Droit international public (Paris, Sirey, 1980), vol. IV, p. 183.

17/ Cf. Note from the Swiss Political Department dated 10 January 1923, Répertoire Suisse, vol. III, pp. 1501-1504, quoted by Rousseau, op. cit., vol. IV, p. 183.

23. Aside from these sporadic occurrences, which are by now part of history, the principle has been universally accepted. The United Nations itself has interpreted section 4 of the Convention on the Privileges and Immunities of the United Nations as necessarily implying the inviolability of information contained in archives and documents as well as the actual archives and documents themselves. 18/

24. In connection with judicial proceedings against United Nations staff members, questions relating to the inviolability of the documents of the Organization have been raised on several occasions. In March 1949, the United States police arrested a member of the United Nations Secretariat on charges of espionage. The Permanent Representative of the State of which the staff member concerned was a national protested against this action on the ground that the official held the rank of Third Secretary in the Ministry of Foreign Affairs of his country and that, consequently, the diplomatic immunity protecting him remained in force even after his appointment to the United Nations. In addition, the Permanent Representative alleged that information from United Nations files had been made known to officials of the Federal Bureau of Investigation. The Secretary-General replied stating that information regarding the status of the official had been made known solely to his attorney.

25. A somewhat different situation arose in the case of Keeney v. United States, where the defendant was prosecuted for contempt of Congress following her refusal to answer, when testifying before a Senate Sub-Committee, the question whether anyone in the State Department had aided her in obtaining employment with the United Nations. The main issue in the case was whether the defendant, as a former employee of the United Nations, was herself privileged from answering that question. The District Court held that her motion of privilege should be denied. The Court of Appeals reversed the earlier conviction and granted a new trial on the ground that the answer sought by the Sub-Committee, in so far as it depended upon data in United Nations files or upon information derived from those files, was rendered privileged by the Charter and the Staff Rules of the United Nations and could not legally be revealed by an official. One of the judges of the Court stated that the question posed

> "related to 'unpublished information'. The United Nations does not tell the world what recommendations underlie appointments of staff members. The United Nations Administrative Manual even defines unpublished information to include the appointment ... [of] or any other confidential information concerning a staff member. I think it plain that staff members would not have such unpublished and confidential information unless it had been made known to them, by reason of their official position." 19/

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18/ See Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118 and Add.1 and 2), p. 238, para. 132.

19/ See District Court, District of Columbia, 17 March 1953, 111 F. Supp. 223, and Court of Appeals, District of Columbia Circuit, 26 August 1954, 218 F 2d 843.

26. The quotation in the latter statement by the judge was from staff rule 7 of the United Nations (now staff regulation 1.5), requiring staff members not to communicate unpublished information "except in the course of their duties or by authorization of the Secretary-General". The Court also stated that the privilege of non-disclosure as it applied to officials was "necessary for the independent exercise of their functions in connexion with the Organization".

27. There have, however, been instances where information was supplied, not amounting to access to United Nations files, as in a case which arose in 1956. A person who had previously held a United Nations short-term appointment submitted a claim to the United States authorities for unemployment insurance benefits. There was some question as to whether or not there was an overlap between the period of her employment by the United Nations and that for which the claim was being made. The United Nations informed the United States Department of Labor that although it would not grant access to United Nations files or permit the production and delivery of the entire personnel file, it would be prepared in the circumstances to produce its record of the employment of the person concerned, together with a brief qualified testimony necessary to explain it. 20/

28. More recently, according to reports from the United Nations, the specialized agencies and the International Atomic Energy Agency (IAEA), there has been no controversy regarding recognition of the inviolability of the archives and documents of the United Nations, the specialized agencies and IAEA. However, the International Monetary Fund (IMF) notes that its staff members on mission carry an official briefcase for papers and documents and that, on a few occasions, customs officials have insisted on searching the briefcase even when informed of the inviolability of the organization's archives, and documents, including codes, have been examined. In no case have documents been confiscated. IMF has, of course, protested against these actions, and assurances have been received that such incidents would henceforth be avoided. Similarly, there have been some incidents reported of interference with IMF documents sent by private courier. 21/

29. In addition to the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, the headquarters agreements contain express provisions on the inviolability of archives. Such provisions differ little in their wording; in substance, they set out the principle of the absolute inviolability of archives more or less broadly, depending on the case. To be noted in this connection, among others, are the General Agreement on Privileges and Immunities of the Council of Europe, article 5; 22/ the Agreement between France and the United Nations

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20/ See Yearbook ... 1967, vol. II (document A/CN.4/L.118 and Add.1 and 2), p. 239, para. 136.

21/ See document A/CN.4/L.383/Add.2, p. 18, para. 69.

22/ See Council of Europe, European Treaty Series, No. 2, p. 4; and Nos. 4, 10, 22, 28 and 36.

Educational, Scientific and Cultural Organization (UNESCO), article 14, paragraph 2; 23/ the Articles of Agreement of IMF, section V; 24/ the Agreement between Switzerland and the World Health Organization (WHO), article 8; 25/ the Agreement between Switzerland and the World Meteorological Organization (WMO), article 8; 26/ the Agreement between Switzerland and IAEA, section 21; 27/ the Agreement on Privileges and Immunities of the Organization of American States (OAS), article 4; 28/ the Agreement establishing the Inter-American Development Bank (IDB), article XI, section 5; 29/ and the Convention of the Privileges and Immunities of the League of Arab States, article 4. 30/

30. The question of the inviolability of the archives of an international organization has two aspects. First, for practical reasons, the archives of the organization must be open to its officials, who are bound by the obligation of professional secrecy. This aspect, which concerns the internal affairs of the organization, is regulated by the organization itself and is covered by its internal law. Through appropriate legal mechanisms, international organizations determine the way in which their archives are to be used and the persons who are authorized to use them, and regulate the arrangements for their use. It would not be appropriate for us to discuss or examine this aspect of the question.

31. The second aspect involves the inviolability of the archives of international organizations in relation to the exterior. It is this second aspect which we are required to study in conformity with the mandate given to the International Law Commission by the General Assembly. The inviolability of the archives of international organizations in relation to the exterior is, as we have seen, absolute, just as in the case of States. It can be said that in the case of international organizations, such inviolability should be even more strict, since its purpose is to protect not only the secrets of the international organizations themselves, but also those of their member States.

32. In accordance with doctrine and State practice, as we have shown, national authorities must refrain from any kind of administrative or jurisdictional coercion and are obligated to protect the archives of international organizations against any external interference.

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23/ See Legislative Texts and Treaty Provisions, vol. II, p. 244.

24/ Ibid., p. 252.

25/ Ibid., p. 255.

26/ Ibid., p. 310.

27/ Ibid., p. 333.

28/ See Pan American Union, Law and Treaty Series, No. 31, p. 7.

29/ See Legislative Texts ..., p. 388.

30/ Ibid., p. 414.

33. Even when an international organization waives immunity from jurisdiction, it cannot be obliged to comply with national procedural rules and, in particular, with the obligation to produce documents requested by the courts. We know that waiver of immunity from jurisdiction does not entail a simultaneous waiver of immunity from measures of execution. There is no doubt that an order for discovery of documents constitutes coercion, and the privilege in these circumstances is just as broad as that accorded to foreign States. 31/

34. C. W. Jenks has expressed a categorical opinion on this point stating that, as regards inviolability of archives, international organizations enjoy a fuller measure of immunity than the Government in English law. 32/ He observes firmly: "No order for discovery of documents can be made against an international body corporate which is entitled to inviolability of archives". 33/

35. In the course of an inquiry concerning United Nations staff members of United States nationality, the United States Government called upon them to produce certain documents belonging to the archives of the Organization, declared inviolable by United States law itself. The Secretary-General of the United Nations opposed such a step because he considered that it violated the Organization's archives. The United States grand jury did not object to the position adopted by the Secretary-General. Nevertheless, on 22 October 1952 the Secretary-General set up an international Commission of Jurists which was requested, in particular, to advise him on the following question:

> "(iv) In the course of inquiries by agencies of the United States Government, should the Secretary-General make available archives of the Organization or authorize staff members to respond to questions involving confidential information relating to official acts?". 34/

36. The Commission replied in the following terms: "All the relevant documents declare the archives of the United Nations to be inviolable. In our opinion, the Secretary-General should never waive this privilege. Indeed, we doubt whether he has any power to do so". 35/

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31/ See Jean Duffar, Contribution à l'étude des privilèges et immunités des organisations internationales, p. 169.

32/ See C. W. Jenks, The legal personality of international organizations (BYBIL, 1945), p. 234.

33/ Ibid., pp. 234 and 235, cited by Duffar, op. cit., p. 169.

34/ See Official Records of the General Assembly, Seventh Session, Annexes, document A/2364 of 30 January 1953.

35/ Ibid., p. 33.

37. The United Nations interprets strictly the principle of the absolute inviolability of its archives, which is, moreover, in accordance with United States legislation (International Organizations Immunities Act, which states, at the end of section 2 (c): "The archives of international organizations shall be inviolable". 36/

38. Protection by States of the inviolability of the archives of an international organization against any interference by persons from outside the organization involves preventing such persons from taking possession of the archives or obtaining information about their contents. The State is therefore under an obligation to refrain and protect. This is the rule in diplomatic law, 37/ and it applies also in the case of international organizations.

39. The Vienna Convention on Diplomatic Relations expressly provides in article 45 for the protection of the archives of diplomatic missions in case of emergency. The article states:

> "If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:
>
> (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives".

40. The same Convention does not refer specifically in article 24 to the duty of the receiving State to protect the archives against any interference by third parties. As Philippe Cahier states, the wording of this article is defective 38/ because "this inviolability would obviously be illusory if the receiving State were not obliged to protect the archives".

41. Nevertheless, despite this omission in the Vienna Convention, it is understood, as we have already noted, that the customary rule according to which a State is obliged to protect the archives of a diplomatic mission remains in force. This can clearly be deduced from the commentary of the International Law Commission to the draft article on the inviolability of archives. 39/

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36/ Legislative Texts ..., vol. I, p. 129.

37/ P. Cahier, op. cit., pp. 216 ff.

38/ Op. cit., p. 210.

39/ Yearbook of the International Law Commission, 1958, vol. II, Report of the Commission to the General Assembly on the work of its tenth session (A/3859), chap. III, para. 53, art. 22.

42. This absolute inviolability of archives was demonstrated in practice in connection with the closing of the German Legation at Berne in 1945. The premises were placed under the protection of the Political Department of the Swiss Confederation, and the archives were sealed. 40/

43. The customary rule was also applied in the case of the Romanian Legation at Berne, which was attacked by a group of individuals who occupied the Legation for 38 hours between 15 and 16 February 1951. They read a number of documents forming part of the Legation archives and destroyed them. The Swiss Government was criticized for not having taken appropriate steps to restore the inviolability of the archives immediately. In fact, the Swiss authorities preferred to negotiate with the attackers so as not to endanger human lives by storming the Legation premises. 41/

44. The Swiss authorities were nevertheless obliged not only to protect the premises, but also to prevent violation of the secrecy of the archives.

45. In another case, on the other hand, Switzerland complied fully with its obligations. In 1950, when two armed Hungarian refugees entered the Hungarian Legation at Berne in order to seize documents, the police, alerted and given permission by the head of the mission, entered the premises and arrested the perpetrators. 42/

46. There is no doubt that the principle is equally valid in the case of international organizations. It is clear that when the archives are kept in the premises occupied by an international organization, protection of the premises entails protection of the inviolability of the archives. But when the archives are carried out of the premises, it must be acknowledged that the host State is obliged, should the circumstances so require, to provide the protection necessary to preserve the secrecy of their contents or to allow the organization itself to do so.

47. The States members of an international organization should therefore refrain from exercising any administrative coercion whatsoever against the individuals or means of transport that may be carrying archives. They should not invoke the prerogatives of the judicial authorities in order to infringe the secrecy of the archives. They also have the obligation to protect the archives of international organizations against interference by third parties.

48. We can thus conclude that international instruments, whether in the form of treaties, headquarters agreements and even unilateral declarations or acts (for example the International Organizations Immunities Act of the United States), like

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40/ Ibid.

41/ P. Cahier, op. cit., p. 218.

42/ Ibid., p. 318, footnote 76.

doctrine and State practice, fully support the principle of the inviolability of the archives of international organizations. The right to a private life, to privacy, in other words to secrecy, is recognized to be a basic element guaranteeing the freedom of action and functional efficiency of international organizations. Respect for privacy and the preservation of secrecy constitute the very basis of the independence of international organizations, to which they must be entitled if they are to fulfil properly the purposes for which they were established.

## B. Draft article 12

49. In accordance with the foregoing, we wish to propose the following draft article:

"Article 12

1. The archives of international organizations and, in general, all documents belonging to or held by them shall be inviolable wherever they are located.

2. Archives of international organizations shall be understood to mean all papers, documents, correspondence, books, films, tape recordings, files and registers of the international organization, together with ciphers, codes, and the filing cabinets and furniture intended to protect and conserve them."

50. The second part of the draft article could be included in the section on definition of terms at the beginning of the draft articles. The Special Rapporteur has no preference in that regard except, perhaps, that of making the text clearer by including the definition of archives in the body of the draft article itself, thus obviating the need to refer to another draft article.

## III. PUBLICATION AND COMMUNICATIONS FACILITIES

### A. Preliminary observations

51. In the case of international organizations, freedom of communication cannot be dissociated from freedom of publication. The effectiveness of any international organization depends largely on the means of expression and communication available to it, that is, on the exchange and dissemination of ideas or, in other words, the power of freedom of expression. International organizations must have the most extensive communications facilities if they are to function properly: they must be able to communicate freely with member States or other organizations, and be able to propagate and disseminate ideas and the results of the work entrusted to them. In short, they must enjoy freedom of publication and communication in order to protect the right to freedom of expression. As Jean Duffar has observed, quoting article 11 of the 1789 Declaration of the Rights of Man, "the unrestrained communication of thoughts or opinions is one of the most precious rights of man", 43/ a right also set forth in article 19 of the Universal Declaration of Human Rights, 44/ article 18 of the International Covenant on Civil and Political Rights 45/ and article 10 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. 46/

52. If this freedom has been recognized in the case of individuals, there is all the more reason why it should be recognized in the case of international organizations, which are called upon to act, inform and consequently communicate on a much greater scale. This observation applies in particular to international organizations of an operational character, for which freedom of communication and information constitutes a basic condition for all their activities.

### B. Publications

#### 1. General considerations

53. Publications constitute the chief, indeed, it might be said, the most basic, form of expression for international organizations. Consequently, the scope of the term "publications", as employed by international organizations both in the legal documents and in practice, is much broader than is usual in domestic law. The breadth of the term varies, of course, from document to document. One of the broadest uses is found, for example, in the wording contained in section 15 (a) of the Agreement between Austria and IAEA, which provides that "all official

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43/ Jean Duffar, op. cit., p. 196.

44/ General Assembly resolution 217 A (III).

45/ General Assembly resolution 2200 A (XXI), annex.

46/ Council of Europe, European Treaty Series, No. 5.

communications directed to the IAEA, or to any of its officials at the headquarters seat, and all outward official communications of the IAEA, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings". 47/

54. That provision clearly establishes the indivisibility which exists in the protection afforded to privacy irrespective of the vehicle used to communicate one's thoughts, whether correspondence, publications, moving pictures, sound recordings or other medium. 48/

55. The concept of publications is stated in a similar, albeit less sweeping, manner in other international instruments. Thus, for example, in the Agreement between Mexico and the International Civil Aviation Organization (ICAO) of 20 December 1956, exemption from prohibitions and restrictions is granted in respect of the "import and export of its publications, photographs, films and gramophone records (section 6 (c))". 49/ In article 15, paragraph 2 (b), of the Agreement between France and UNESCO, the list of exempted items includes "publications, cinematograph films, photographic slides and documents which the Organization may import or publish in the course of its official activities". 50/ Similar provisions are to be found in section 13 of the Agreement between Italy and the Food and Agriculture Organization of the United Nations (FAO), 51/ section 13 of the Agreement between Egypt and FAO, 52/ section 15 of the Agreement between Thailand and FAO, 53/ and article 5 (c) of the Agreement on the Privileges and Immunities of OAS, inter alia. 54/

### 2. Practice

56. In accordance with section 7 (c) of the Convention on the Privileges and Immunities of the United Nations, the Organization is "exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its

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47/ Legislative Texts ..., vol. II, p. 332.

48/ Jean Duffar, op. cit., p. 199, reference No. 7.

49/ Legislative Texts ..., vol. II, p. 182.

50/ Ibid., p. 245.

51/ Ibid., p. 191.

52/ Ibid., p. 215.

53/ Ibid., p. 224.

54/ Ibid., p. 379.

publications". Similar provisions are contained in other agreements, for example, in section 5 (e) of the Agreement between Switzerland and the United Nations; in section 10 (c) of the ECLA Agreement; and in section 8 (d) of the ECAFE Agreement.

57. As regards the specialized agencies, section 9 (c) of the Convention on the Privileges and Immunities of the Specialized Agencies grants to the agencies exemption from duties and prohibitions and restrictions on imports and exports in respect of their publications.

58. The term "publications" has been widely interpreted to encompass not only printed matter but also films, records, recorded radio programmes and audio tapes, as well as books, periodicals and other printed matter published by the organization in question. Note should be taken of the statement made by the Legal Counsel of the United Nations to the Fifth Committee of the United Nations General Assembly at its 982nd meeting, in which he referred to a problem that had arisen regarding the interpretation of the meaning of the term "official use". The Legal Counsel stated:

> "Now, if the United Nations sent a film or recording produced by it as a part of its public information operations to a distributing agent for distribution in a Member State, is the film so imported into the territory of that Member State for the 'official use' of the United Nations? The Secretariat took the affirmative view and the Member concerned, I am glad to report, graciously agreed." 55/

59. Furthermore, in an internal memorandum prepared by the United Nations Office of Legal Affairs in 1952, it was stated that:

> "The term 'official use' in Section 7 (b) must be regarded as comprehending the distribution of United Nations films within Member States not only by the United Nations itself but through the various distributors which contract with the United Nations under the film rental agreements, so long as the United Nations is carrying out an official purpose in effecting the distribution." 56/

60. We can therefore see from the different interpretations given to the term "publications" by the various international organizations that the term covers a rather wide gamut of means of information and dissemination. It encompasses not only publications stricto sensu but also a range of means of information, including motion pictures. The United Nations and the specialized agencies have until now claimed as of right a régime of absolute freedom, providing, of course, for certain specific exceptions in all matters relating to the publications of international organizations.

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55/ A/C.5/972. See also Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118/Add.1), p. 250.

56/ Ibid., p. 251.

61. Another possible way of establishing more direct forms of control by States is through censorship or government licences. In 1962, the United States sought to require the United Nations to obtain a licence to export public information materials to certain States. Following an exchange of correspondence, the United States acknowledged that the United Nations was exempt from that obligation, since such a restriction might cripple its information activities in the States in question. The United Nations based its protest on the provisions of Article 105 of the Charter and section 7 (b) of the Convention on the Privileges and Immunities of the United Nations. 57/

62. A Member State requested the United Nations Information Centre situated in its territory to stop showing United Nations films until they had been cleared with the authorities of the host State. The Secretary-General wrote in 1966 to the Permanent Mission of the State concerned setting out the basis on which exemption from this requirement was claimed, in the following words:

> "The United Nations is not in a position to submit its films to censorship since this would be contrary to the Charter and to the Convention on the Privileges and Immunities of the United Nations, of which your country is a party. The position of the United Nations in this regard derives, in general terms, from Article 105 of the Charter and more specifically from sections 3, 4 and 7 (c) of the Convention on the Privileges and Immunities of the United Nations". 58/

63. It may be noted that section 6 of the ECLA Agreement on the freedom from censorship enjoyed in respect of ECLA correspondence and other communications is expressly extended without limitation by reason of this enumeration "to printed matter, still and moving pictures, films and sound recordings". Similar provisions are contained in section 6 (a) of the Agreement with the Economic Commission for Africa (ECA) and section 13 (a) of the Agreement with the Economic Commission for Asia and the Far East (ECAFE).

64. On the basis of the replies to the questionnaire on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities, 59/ we know that, in practice, more serious problems concerning the recognition of the freedom of publications by the organizations mentioned have not arisen. However, the United Nations referred to two cases under "interpretation of the term 'publications' and problems relating to the distribution of publications".

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57/ Ibid., p. 250, para. 184.

58/ Ibid., p. 252, paras. 199 ff.

59/ A/CN.4/L.383 and Add.1 and 2.

65. A new press law in a Member State required that all periodical publications should carry a record of the name of the editor. In a memorandum to the Office of Public Information, the United Nations Office of Legal Affairs gave the following opinion:

> "The purpose of the provision referred to above of the press law in question is obviously to identify the author of any periodical publication so as to hold him responsible under the law of the Member State concerned. In the distribution of United Nations publications in that State, the Director of the United Nations Information Centre would be performing a United Nations function in his capacity as a United Nations official. He cannot be held accountable to the Government concerned, or for that matter, to any other authority external to the United Nations, in virtue of Article 105 of the Charter and section 18 (a) of the Convention on the Privileges and Immunities of the United Nations. The said provision of the law in question obviously has no application with respect to United Nations publications including those issued by the Information Centre.
>
> "Accordingly, the Director of the Centre should take the necessary steps to request recognition of the exemption from the application of the law in question." 60/

66. The second case refers to the censorship of United Nations films under the censorship laws of a Member State. In a memorandum to the United Nations Office of Public Information in 1969, the Office of Legal Affairs addressed this question, stating, inter alia:

> "2. The United Nations is not in a position to submit its films to censorship, since it would be contrary to the Charter and to the Convention on the Privileges and Immunities of the United Nations to which the Member State concerned acceded without reservations. The position of the United Nations in this regard derives, in general terms, from Article 105 of the Charter and, more specifically, from Sections 3, 4 and 7 (c) of the Convention on the Privileges and Immunities of the United Nations".

67. The legal provisions cited by the Office of Legal Affairs refer to the inviolability of the premises of the United Nations; the immunity of the property and assets of the United Nations, wherever located and by whomsoever held, from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legal action; the inviolability of the documents belonging to it or held by it; and, lastly, the exemption accorded to the United Nations from prohibitions and restrictions on imports and exports in respect of its publications. 61/

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60/ A/CN.4/L.383/Add.1, p. 45, para. 39, and United Nations Juridical Yearbook, 1970, p. 167.

61/ A/CN.4/L.383/Add.1, pp. 45 and 46, para. 40, and United Nations Juridical Yearbook, 1969, p. 205.

68. As to the distinction between United Nations films intended "for screening in commercial cinemas" and films "shown at public or private group-screenings", the United Nations Office of Legal Affairs rejects the notion that "[any] such distinction [could] be made in relation to the Convention on the Privileges and Immunities of the United Nations". According to the Office of Legal Affairs, the establishment of an information centre in the territory of a Member State is effected in accordance with resolutions of the General Assembly, under which both Member States and the Secretary-General are to further the public information work of the United Nations, as spelt out in General Assembly resolutions 13 (I) of 13 February 1946, 595 (VI) of 4 February 1952, and 1405 (XIV) of 1 December 1959.

69. According to paragraph 8 of the "Basic Principles underlying the Public Information Activities of the United Nations" contained in General Assembly resolution 595 (VI), the United Nations Department of Public Information should "promote and where necessary participate in the production and distribution of documentary films, film strips, posters and other graphic exhibits on the work of the United Nations". Concerning the mode of distribution, paragraph 10 of the annex to the Basic Principles states:

> "Free distribution of materials is necessary in the public information activities of the United Nations. The Department should, however, as demands increase and whenever it is desirable and possible, actively encourage the sale of its materials. Where appropriate, it should seek to finance production by means of revenue-producing and self-liquidating projects."

The United Nations Office of Legal Affairs concludes that "it is a long-established principle that distribution of United Nations public information material may take place through commercial channels ... there is no foundation for distinguishing between various forms of distribution as long as the activities are performed within the scope of the above-mentioned General Assembly resolutions." 62/

70. In practice, then, the term "publications" has been interpreted to cover films, photographs, printed matter and recordings (produced as part of the public information programme of an international organization and exported or imported for exhibition or retransmission), as well as books, periodicals and other printed matter. While no disputes have arisen concerning the scope of the term "publications", some specialized agencies, such as FAO, the World Bank and the International Development Association (IDA), have encountered some difficulties in applying the relevant provisions, and also with regard to the UNESCO convention on the free circulation of educational materials. For instance, some countries levy import duties on the publications and documents of international organizations, and the distribution of books, films and microfiches is sometimes hindered by restrictions or long delays in customs.

71. The sub-committee on the privileges and immunities of international organizations of the European Committee on Legal Co-operation noted that general

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62/ A/CN.4/L.383/Add.1, p. 47, para. 40.

agreements on the privileges and immunities of international organizations usually do not contain express provisions on the dissemination of publications once they have been imported, but pointed out that article 10 of the Protocol of the European Space Vehicle Launcher Development Organization specifically provides that publications must be circulated without restriction. While agreeing that States should facilitate distribution of the publications of an organization of which they are members, it took the view that member States should reserve the right to take the necessary steps to protect public order. 63/

## C. Communications

### 1. Definition and legal texts

72. Article IV, section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies provides that:

> "Each specialized agency shall enjoy, in the territory of each State party to this Convention in respect of that agency, for its official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio".

73. This provision is similar to the one in section 9 of the Convention on the Privileges and Immunities of the United Nations, which states that:

> "The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communication; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations".

74. Similar provisions can be found in other international agreements, for instance in article III of the ECLA Agreement, sections 11 and 13 of the ECAFE Agreement, sections 5 and 6 of the ECA Agreement and section 7 of the Agreement between Switzerland and the United Nations. In this last case, the words "in conformity with the International Convention on Telecommunications" were added at the end of the first sentence.

75. The General Agreement on Privileges and Immunities of the Council of Europe is more specific, in that its article 8 establishes that the Committee of Ministers

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63/ Council of Europe, Rapport explicatif (Strasbourg, 1970), p. 35, para. 73.

and the Secretary-General shall enjoy in the territory of each member, for their official communications, treatment at least as favourable as that accorded by that member to diplomatic missions, and that no censorship shall be applied to the official correspondence and other official communications of the Committee of Ministers and the Secretariat. The article refers specifically to diplomatic treatment and is clearly intended to protect freedom of communication effectively against any attempt by a State to obstruct or impede the Council's mission if it considers that mission potentially detrimental to its own interests. Reference to this provision is justified by the similarity of situations. Like international organizations, diplomatic missions conduct their activities in a territory which is not their own. Moreover, the international nature of their functions requires, as we have seen, that secrecy be respected. 64/

76. The inviolability of the communications of international organizations would thus seem to be defined by reference to the law of diplomatic missions. There could be no more favourable system than that which States agree to apply to each other. Such a system is provided for in article 27 of the Vienna Convention on Diplomatic Relations, which states:

> "The receiving State shall permit and protect free communication on the part of the mission for all official purposes".

77. It may also be noted that the internal law of most Western countries confirms the inviolability of communications between persons. By extension, international law might be said to recognize that such inviolability is guaranteed in the case of international organizations.

78. The term "communications" encompasses all means of transmitting ideas: mails, telegraph, telephone and radio. Most legal systems guarantee the inviolability of communications. Thus, for example, article 63 of the Constitution of Venezuela states: "Correspondence in all its forms is inviolable. Letters, telegrams, private papers and any other means of correspondence may not be seized except by judicial authority". It nevertheless establishes a limitation which is not applicable to international organizations. A similar provision is to be found in article 25 of the Constitution of Mexico; in articles 10, 18 and 44 of the Basic Law of the Federal Republic of Germany; and in article 36, paragraph 4, of the Constitution of Switzerland.

79. Although the principle is formulated in absolute terms, de jure and de facto derogations from it exist in all countries, as in the case of the Venezuelan Constitution. However, it would seem that such derogations are ruled out in the case of international organizations.

80. The inviolability of the communications of diplomatic missions implies on the part of the receiving State both abstention and a positive obligation to protect freedom of communication; the communications of international organizations are

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64/ See Jean Duffar, op. cit., p. 197.

entitled to the same treatment. Furthermore, the State must refrain from using against them any of the means available to it in internal law. Its responsibility may be entailed if it does not protect the communications of international organizations.

81. The protection provided by the State may be direct or indirect, depending on the arrangements involved. 65/ The protection is direct when the State conducts or operates the means of communication itself. It would seem that in such cases the obligation of the State consists in doing everything possible to fulfil its undertakings, and is not, therefore, an obligation of result. In order to avoid any controversy, various headquarters agreements simply require the State to enter into an obligation of this kind rather than an obligation of result. For example, article VII, section 17 (a), of the Headquarters Agreement between the United States and the United Nations states:

> "In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly to ensure that the work of the United Nations is not prejudiced". 66/

82. The obligation to guarantee absolute inviolability is indirect when the communications are not carried out by the services of the State itself. The State must then intervene to see that non-governmental institutions are ensuring the fulfilment of its international obligations. The responsibility of the host State is not diminished in international law by the fact that the communication service involved is a private one. In practice, it seems to be considered that the State has fulfilled its obligations when it proves that it has sought with due diligence to protect the communications of the organization.

83. According to the replies to the questionnaire on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities, 67/ the provisions of section 9 of the Convention on the Privileges and Immunities of the United Nations have in general been well observed. In three Latin American countries, Bolivia, El Salvador and Mexico, the United Nations has received the benefit of special postage rates or franchise in respect of official mail posted in those countries. In Bolivia, the United Nations Information Centre was allowed free postage. In Mexico, the matter was governed by an official decree, published in the Diario Oficial No. 19 of 24 September 1963, whereby the Mexican Government granted postal and telegraphic franchise to the organizations

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65/ Ibid., p. 210.

66/ Legislative Texts ..., vol. I, p. 209.

67/ Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118 and Add 1 and 2), and A/CN.4/L.383 and Add.1 and 2).

participating in the Technical Assistance Board programme for the duration of the Basic Agreement on Technical Assistance between Mexico and the United Nations signed on 23 July 1963. In El Salvador, a similar franking privilege was given in 1961, in connection with which mention was made of the Convention of the Postal Union of the Americas and Spain, under which members of the diplomatic corps in El Salvador of the countries of the Union were entitled to that privilege.

84. Following a Convention in 1966 between the Latin American States, Canada and Spain which granted special franking privileges to the correspondence of diplomatic missions of the members of the Postal Union of the Americas and Spain, the Secretary-General of the United Nations, in a letter of 24 August 1971 to the permanent representatives of those countries to the United Nations, claimed those privileges for the United Nations under section 9 of the Convention on the Privileges and Immunities of the United Nations. 68/

85. There is a reason for the addition at the end of the first sentence of section 7 of the Agreement with Switzerland, which as already noted reads as follows: "in conformity with the International Convention on Telecommunications". In effect, this Convention, adopted at Atlantic City in 1947, provides that telegrams and telephone calls sent by the United Nations should be treated as though sent by a Government. The assimilation was made in the following terms:

"Article 36

"Subject to the provisions of Article 45, Government telegrams shall enjoy priority over other telegrams when priority is requested for them by the sender. Government telephone calls may also be accorded priority, upon specific request and to the extent practicable, over other telephone calls."

86. Article 45 of that Convention gives "absolute priority" to "distress calls and messages". Furthermore, annex 2, in defininig the terms used in the Convention, includes the following clause:

"Government Telegrams and Government Telephone Calls: These are telegrams or telephone calls originating with any of the authorities specified below:

...

"(f) the Secretary-General of the United Nations and the Heads of the subsidiary organs of the United Nations." 69/

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68/ A/CN.4/L.383/Add.1, p. 53.

69/ Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118/Add.1), p. 259, para. 220.

87. In 1949 the Administrative Council of the International Telecommunication Union (ITU) adopted resolution No. 142, in which it requested its Secretary-General, inter alia,

> "to keep up to date the list of the subsidiary organs of the United Nations and to forward to the Members and Associated Members of the Union a copy of this list and to advise them of any modifications therein." 70/

88. Difficulties arose, however, over the question of determining which were subsidiary organs of the United Nations. Faced with a refusal to grant governmental treatment to a particular United Nations information centre, the United Nations wrote to ITU in 1951, pointing out that information centres formed part of the Secretariat and were not subsidiary organs; telegrams and telephone calls originating with them were therefore entitled to governmental treatment, as having been made sent or on behalf of the Secretary-General, without the need to be specially listed. In the Buenos Aires Convention, adopted by ITU in 1952, the clause was amended so as to include under "Government Telegrams and Government Telephone Calls" those originating with:

> "The Secretary-General of the United Nations, the Heads of the principal organs and the Heads of the subsidiary organs of the United Nations." 71/

89. In the Geneva Convention of 1959 this definition was changed again so as to refer to telegrams and telephone calls originating with "the Secretary-General of the United Nations; Heads of the principal organs of the United Nations". 72/

90. Apart from this problem of definition, it can be confirmed that United Nations telegrams and telephone calls (unlike those of the specialized agencies) now receive treatment at least as favourable as that granted to Governments.

91. As regards priority (the only aspect covered expressly by the Telecommunication Convention) it may be noted that, under the provisions of chapter XVII, article 62, paragraph 7, of the Telegraph Regulations, as revised at Geneva in 1959, a special priority over and above that afforded to government telegrams is granted to United Nations telegrams which are sent by the Secretary-General, the Presidents of the Security Council and the General Assembly, and certain other officials, in connection with the application of the provisions of Chapters VI, VII and VIII of the United Nations Charter. However, in addition to receiving priority for its telecommunications on terms at least as favourable as those afforded to Governments, the United Nations has also been granted the benefit

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70/ Ibid., p. 259.

71/ Ibid.

72/ Ibid.

of the same rates as are enjoyed by Governments in respect of their intercommunications.

92. According to the replies to the above-mentioned questionnaire, no cases have been reported in which the national authorities have applied censorship to official correspondence and other communications of the United Nations.

93. With regard to the specialized agencies, according to the replies to the questionnaires on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities, 73/ there has been faithful compliance with the treatment accorded to the specialized agencies under article IV, section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies, with one important exception. The exception concerns privileges in respect of telecommunications, since, under the various international telecommunication conventions, not all the specialized agencies have enjoyed treatment in respect of priorities, rates and taxes not less favourable than that accorded to Governments.

94. The International Telecommunication Convention, adopted at Atlantic City in 1947 at approximately the same time as the specialized agencies Convention was adopted by the General Assembly, provides that priority shall be given to United Nations telegrams and telephone calls, but does not do so for those of the specialized agencies. Since the Atlantic City Convention did not accord governmental treatment for communications of the specialized agencies, the Administrative Council of ITU, at its second session, held in January 1948, adopted a resolution recommending to the Secretary-General of the United Nations, as well as to ITU member States, that the specialized agencies Convention should be interpreted in the light of the Atlantic City Convention. There followed a series of exchanges between the Secretaries-General of the United Nations and of ITU. By a letter dated 30 August 1948, the Secretary-General of the United Nations informed the Secretary-General of ITU that the specialized agencies Convention had become applicable to ICAO and WHO, and expressed the opinion that States parties to the Convention would have the duty to apply the provisions of section 11 to those agencies. 74/

95. Despite lengthy correspondence between the parties concerned, and negotiations and discussions in ITU, the latter has systematically refused to include the specialized agencies among those empowered to send government telegrams or to place government telephone calls. Indeed, it has urged the United Nations to amend section 11 of the specialized agencies Convention in order to resolve the problem. As of 1 June 1985, eight Governments had declared that they were unable to comply

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73/ A/CN.4/L.118 and Add.1 and 2, and A/CN.4/L.383 and Add.1 and 2.

74/ Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118/Add.2), p. 309.

fully with the provisions of section 11 until such time as all other Governments had decided to co-operate in granting such treatment to the agencies. 75/ Thus, except in certain extreme cases (e.g., urgent epidemiological telegrams of WHO, under article 61 of the Telegraph Regulations, or where strikes prevent the dispatch of ordinary cables, so that the procedure envisaged in resolution No. 27 of the Buenos Aires Convention comes into play), the specialized agencies have not enjoyed the privilege of priority for their telecommunications, nor the advantages of government rates.

96. In the case of specialized agencies of a financial nature, namely, the International Bank for Reconstruction and Development (IBRD), IDA, the International Finance Corporation (IFC) and IMF, the facilities to be accorded to their communications are set forth in their respective constitutions in closely similar terms. Article VII, section 7, of the Articles of Agreement of IBRD, for example, provides that "the official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members".

97. Except for a dispute which arose in 1949 between the United States on the one hand and IBRD and IMF on the other concerning a problem of interpretation, which was solved in favour of the two agencies, the right of the financial agencies mentioned in the preceding paragraph, whose constitutions contain the same provisions, to enjoy the same treatment as that granted to Governments in respect of telecommunications has not been challenged. 76/

98. Lastly, it may be noted that in article IV, section 10, of the IAEA Agreement on Privileges and Immunities, communication facilities are granted on the same terms as those enjoyed by Governments only to the extent that such action is "compatible with any international conventions, regulations and arrangements" to which the State concerned is a party. A similar provision is contained in article VI, section 13, of the IAEA host Agreement with Austria and in article 10 of the UNESCO host Agreement with France. 77/

99. The scope of the obligations assumed by the United States towards the United Nations is much more vague. Article VII, section 17 (a), of the Headquarters Agreement stipulates that "the headquarters district shall be supplied on equitable terms with the necessary public services, including ... post, telephone, telegraph, ...".

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75/ A/CN.4/L.383/Add.2, p. 29.

76/ Ibid., p. 312.

77/ Ibid., p. 312.

## 2. Means of communication

### (a) General considerations

100. The means of communication which can be made available to international organizations can naturally not be other than identical to those employed by States or diplomatic missions. Accordingly, in this case also, international organizations are assimilated or equated to diplomatic missions in order that they may use the same means of communication as the latter.

101. The European Committee on Legal Co-operation issued the following opinion on this matter: "Not all international organizations need to use couriers or to have special facilities for sealed bags, codes and ciphers. In the case of many organizations, access to ordinary postal and telecommunications services should be sufficient". 78/

102. We do not think that it should be of major concern that not all international organizations must as a matter of necessity use all exceptional means of communication. The principle should be recognized, as it generally is, and applied in appropriate cases. In those cases where the functions of the organization do not justify the application of the principle, the organization should have the authority to waive it.

103. In any event, with the increasingly sophisticated technological advances in communication by radiotelephony and radiotelegraphy (telex, facsimile transmission, etc.), the issue will become less and less important. In the future - and, to a large extent, even today - the issue will be reduced to priority in having the appropriate equipment installed, and to preferential tariffs and applicable taxes and service charges.

104. As far as the relevant treaties are concerned, the Vienna Convention on Diplomatic Relations stipulates, in article 27, that:

> "1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending States, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.
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> 2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.
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> 3. The diplomatic bag shall not be opened or detained."

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78/ Council of Europe, op. cit., p. 37, para. 81.

105. The means of communication, as can be seen from the above article, comprise four main categories, namely, codes, the diplomatic bag, couriers and telecommunications. As it would be impossible to compile an exhaustive list, the International Law Commission and the Vienna Conference on Diplomatic Relations preferred to adopt a criterion of a general character. 79/

106. For its part, the Convention on the Privileges and Immunities of the United Nations stipulates, in section 10, that "the United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags", while the Convention on the Privileges and Immunities of the Specialized Agencies provides, in section 12, that:

> "No censorship shall be applied to the official correspondence and other official communications of the specialized agencies.
>
> The specialized agencies shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.
>
> Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency."

107. We should mention that the corresponding provision, section 10 of the Convention on the Privileges and Immunities of the United Nations, contains no reference to security precautions, while the prohibition of censorship figures separately in section 9 of that Convention.

108. As may be seen from the above texts, the privileges and immunities of international organizations are defined in relation to those of diplomatic missions, as specified in article 27 of the Vienna Convention on Diplomatic Relations.

109. In addition to the aforementioned Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, there are many other international instruments under which the treatment accorded to international organizations is assimilated to that accorded to diplomatic missions. Examples include article II, sections 7 and 8, of the Headquarters Agreement between Switzerland and the United Nations; 80/ the Agreement between Switzerland and the International Labour Organisation (ILO); articles 12 and 13 and articles 5 and 6 of the implementation agreement; 81/

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79/ Yearbook of the International Law Commission, 1957, vol. I, pp. 73-77, and Yearbook ..., 1958, vol. I, pp. 126-129.

80/ Legislative Texts ..., vol. I, p. 198.

81/ Ibid.

articles 12 and 13 of the Agreement between Switzerland and WHO; 82/ the Agreement between Switzerland and WMO; 83/ the Agreement between Canada and ICAO, sections 8 and 10; 84/ the Agreement between Italy and FAO, sections 11, 12 and 14; 85/ and articles 10 and 11 of the Agreement between France and UNESCO. 86/

(b) Codes

110. As we have seen, whenever international organizations have been allowed the benefit of diplomatic status, they have also been fully authorized to use coded correspondence, without there being any need for a specific reference to such authorization. As we have said, the United Nations enjoys that right by virtue of section 10 of the Convention on the Privileges and Immunities of the United Nations. The Organization has of course used codes in cases where it considered this advisable, and no legal problems appear to have arisen as a result. 87/

111. With respect to the specialized agencies, we have seen that section 12 of the Convention on the Privileges and Immunities of the Specialized Agencies authorizes them to use codes. The majority of the specialized agencies, however, do not use them in their correspondence. 88/ In general, there has always been recognition of the rights and the corresponding immunities and privileges referred to in the second paragraph of section 12 of the Convention on the Privileges and Immunities of the Specialized Agencies, namely, the "right to use codes ...".

112. Article 14 of the Harvard Law School draft stated specifically that international organizations had the right to use codes and ciphers:

> "1. A receiving State shall freely permit and protect official communications by whatever available means, including the employment of messengers provided with passports ad hoc and the use of codes and ciphers:
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> ...

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82/ Ibid., vol. II, pp. 256 and 261.

83/ Ibid., pp. 311 and 315.

84/ Ibid., p. 163.

85/ Ibid., pp. 192 and 193.

86/ Ibid., p. 240.

87/ Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118/Add.1), p. 260.

88/ Ibid., p. 312.

(c) Between a mission of the sending State and the agents of public international organizations, such as ...". 89/

113. Accordingly, there seems to be no dispute as to the application of that right and the granting of the privileges which international organizations are guaranteed on the basis of that right.

(c) The diplomatic bag

114. We have seen that the Convention on the Privileges and Immunities of the United Nations and the corresponding Convention relating to the specialized agencies recognize that the United Nations and those agencies are entitled to use the diplomatic bag for their correspondence.

115. For its part, the International Law Commission, with a view to closing the loophole in the Vienna Conventions on consular and diplomatic relations, gave the following definition of "diplomatic bag" in article 3, paragraph 1 (2), of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and in the draft Optional Protocol:

"(2) 'diplomatic bag' means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communications referred to in article 1 and which bear visible external marks of their character as:

(a) a diplomatic bag within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular bag within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a bag of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975". 90/

116. It should be noted that no mention was made of the diplomatic bag of international organizations. Draft article 2, however, in referring to "couriers and bags not within the scope of the present articles", states that:

"The fact that the present articles do not apply to couriers and bags employed for the official communications of special missions or international organizations shall not affect:

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89/ P. Cahier, op. cit., p. 211, reference No. 57.

90/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10), p. 31.

(a) the legal status of such couriers and bags;

(b) the application to such couriers and bags of any rules set forth in the present articles which would be applicable under international law independently of the present articles." 91/

117. In the commentary to the draft article, the Commission explained why it had ruled out the explicit inclusion of international organizations within the scope of the draft articles, as defined in article 1. The commentary contained the following qualification, however: "The fact that the draft articles deal only with couriers and bags of States does not preclude the possibility of substantial similarities between the legal régime of couriers and bags of international organizations, particularly those of a universal or of a broad regional character and the legal régime of couriers and bags of States."

118. Opinions were divided during the discussion of that question in the International Law Commission and the Sixth Committee of the General Assembly. Some of the written comments and observations reflected support for the restriction of the scope of the draft articles to the couriers and bags of States; but a large number of comments and observations reflected support for the inclusion of the couriers and bags of international organizations within the scope of the draft. 92/

119. After listing a series of considerations, and in accordance with the comprehensive and uniform criterion on which the draft articles were based, the Special Rapporteur suggested that a new paragraph 2 should be inserted in article 1, to read as follows:

"1. ...

"2. The present articles shall apply to the diplomatic courier and the diplomatic bag used for the official communications of an international organization with a State or with other international organizations."

120. After lengthy discussion, the Commission decided not to include the proposed new paragraph. Some argued in favour of its inclusion, others against. In this particular instance, as was pointed out in the Commission the repeated insistence by some members on differentiating between States and international organizations was inopportune. International organizations are established by States and use diplomatic couriers and diplomatic bags, as we have seen, without any serious objection having been raised. Both the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, as well as many international instruments (headquarters agreements, technical assistance agreements and so forth) contain similar specific provisions on this subject.

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91/ Ibid., p. 29.

92/ Ibid., p. 302.

121. Here there appears to be a slight contradiction between the decision taken by the Commission, and approved by the Sixth Committee of the General Assembly, to adopt a comprehensive and uniform criterion as a basis for the draft articles (harmonization of diplomatic law established in the various Vienna Conventions), and the exclusion from these rules of international organizations, which are covered by such law in accordance with existing instruments.

122. However, given the difference of opinions, the International Law Commission opted for confining the scope of the draft articles to couriers and bags employed by States "in order not to jeopardize the acceptability" of the draft articles, but at the same time it believed it was appropriate that States should be given the choice to extend, if they so wished, the applicability of the draft articles to couriers and bags of, at least, international organizations of a universal character. Accordingly, it prepared and approved a draft Optional Protocol which states, in article I, that:

> "The draft articles also apply to a courier and a bag employed for the official communications of an international organization of a universal character:
>
> (a) with its missions and offices, wherever situated, and for the official communications of these missions and offices with each other;
>
> (b) with other international organizations of a universal character." 93/

123. According to the replies to the questionnaires concerning the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities, 94/ although the United Nations has used couriers, the dispatch of communications in bags has been much more frequent. In either case, the privileges and immunities of the United Nations have been observed. A few incidents have occurred, however, when government officials, usually minor officials, acting in error or in ignorance of international regulations, have opened United Nations bags.

124. Writing to the Legal Adviser of a United Nations subsidiary organ after an incident in which customs authorities had opened a sealed pouch which was being carried in a United Nations vehicle, the Legal Counsel summarized the legal position as follows:

> "As a general rule, the diplomatic bag is inviolable; it may not be subject to customs inspection or any other form of interference. Should the receiving State, on suspicion that a diplomatic bag contains improper objects, open it for inspection but its suspicion proved to be unfounded, the sending

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93/ Ibid., p. 123.

94/ Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118 and Add.1 and 2), p. 260, and A/CN.4/L.383 and Add.1 and 2.

State would be within its right to complain of a violation of international law. On the other hand, if improper objects are found in the bag, it would be the sending State that is guilty of abuse of privilege and no complaint from it may lie. This, I believe, sums up the general rule as practised by States." 95/

125. In 1962, in agreeing to the establishment of a pouch service between the United Nations and its capital, a Member State sought to impose the condition that, in case of doubt, the Government might open the pouch in the presence of a United Nations official, on the pretext that it had not signed the Convention on the Privileges and Immunities of the United Nations. The Organization found the condition unacceptable and pointed out that, under the technical assistance agreement which the Member State had concluded earlier, the State had agreed to apply the said Convention in respect of technical assistance operations for which the pouch service was required. The Government withdrew the restriction and granted the United Nations the right to use the diplomatic bag unconditionally.

126. In the case of the regional commissions of the United Nations (other than the Economic Commission for Europe (ECE)), the relevant agreements expressly provide that the correspondence which may be sent by courier or in (sealed) diplomatic bags includes "publications, documents, still and moving pictures, films and sound recordings (sect. 13 (b), ECAFE Agreement; sect. 6 ECLA Agreement, and sect. 6, ECA Agreement).

127. With regard to the specialized agencies, again according to the replies to the above-mentioned questionnaires, the majority of specialized agencies do not use codes or dispatch correspondence by courier or in bags. Those that do so state that they have not experienced any serious difficulties in securing appropriate recognition of their rights in this regard. 96/

(d) Diplomatic couriers

128. As has been said, this means of communication is infrequently used by the United Nations and the specialized agencies. However, it should be pointed out that, in the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier prepared by the Commission, an effort has been made to fill the gaps that exist in the Vienna Conventions in the field of diplomatic law in respect of the definition of "diplomatic courier" and "diplomatic bag" and the status and, more particularly, the privileges and immunities of the diplomatic courier. As we have pointed out, international organizations are not covered by these rules, and extension of the rules to such

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95/ Yearbook ... 1967, vol. II (document A/CN.4/L.118 and Add.1 and 2), p. 260.

96/ Yearbook ... 1967, vol. II (document A/CN.4/L.118 and Add.1 and 2), p. 312, and A/CN.4/L.383/Add.2, pp. 29 and 30.

organizations is purely optional and effected by acceding to Protocol Two to the draft articles. 97/

(e) Postal services

129. It has been suggested that international organizations could become more independent, and in fact there is currently a trend in this direction as far as postal services are concerned, the idea being that the organization itself should operate its own postal services, independently of the State in which its headquarters is situated. Thus far, States, for obvious reasons, have been reluctant to accept this situation, in particular for security reasons. At present, only the United Nations has its own postal administration, separate from that of the United States, at its New York Headquarters. None of the specialized agencies or IAEA has such a service.

130. The United Nations Postal Administration was established by a General Assembly decision of 1 January 1951, in accordance with General Assembly resolution 232 (III) of 8 October 1948. The United Nations has entered into special agreements with the United States (28 March 1951) and with Switzerland 98/ regarding the operation of postal facilities in United Nations premises situated in those countries. By and large, these agreements have worked smoothly.

131. After the Agreement with the United States had been signed, it proved necessary to examine the exact division of functions between the United States Post Office Department and the United Nations Postal Administration with particular reference to the sale and cancellation of stamps for philatelic purposes.

132. After discussions with the United States Post Office Department, section 3 (ii) of the Agreement was amended by the deletion of the words "in response to orders received by mail". 99/

133. Under the Agreement with Switzerland, the United Nations agrees to use exclusively Swiss postage stamps for the statutory franking of postal dispatches sent by the Geneva Office. The Swiss Postal Administration issues special postage stamps (timbres de service) for use by the Geneva Office, staff members and visitors. United Nations stamps as such are sold solely for non-franking purposes by the United Nations Postal Administration. The Swiss postal authorities cede to the United Nations 50 per cent of the net proceeds obtained from the sale of stamps to private persons for philatelic purposes.

134. The United Nations has also made special postal arrangements in respect of mail sent to or by United Nations peace-keeping forces: see, inter alia,

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97/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10), pp. 26 ff, paras. 72 ff.

98/ United Nations, Treaty Series, vol. 108, p. 231, amended in ibid., vol. 149, p. 414. See also Ibid., vol. 43, p. 327.

99/ Ibid., vol. 149, p. 414.

paragraph 31 of the Agreement with Egypt concerning the United Nations Emergency Force (UNEF). An Agreement was also made with Lebanon regarding the establishement of a UNEF base post office at Beirut.

135. Provisions similar to those set out in paragraph 31 of the UNEF Agreement were included in the Agreements relating to the United Nations Organization in the Congo (ONUC) and the United Nations Force in Cyprus (UNFICYP). 100/

136. As noted above, none of the specialized agencies or IAEA possesses postal services like those of the United Nations. Nevertheless, the Agreements concluded in 1946 and 1948 by Switzerland with ILO and with WHO provide for the issue of special stamps (timbres de service) by the Swiss federal authorities for those organizations, within the limits authorized by the United Postal Union (UPU) Conventions. Stamps have also been issued for the other specialized agencies with headquarters in Switzerland.

(f) Telecommunications. Radio stations

137. The use of this medium of communication by international organizations creates the same problems as its use by diplomatic missions. These problems derive from reluctance on the part of States, prompted mainly by security considerations, and from the original allocation of frequencies in application of the 1947 Atlantic City Convention. Accordingly, article 27, paragraph 1, of the Vienna Convention on Diplomatic Relations establishes a limitation by providing that "the mission may install and use a wireless transmitter only with the consent of the receiving State".

138. If international organizations are treated in the same way as diplomatic missions in this regard, the limitation applies also to them. The problem arose at the time of the League of Nations in relation to Radio-Nations and was solved by the Agreement of 21 May 1930 between the Swiss Government and the League of Nations. 101/

139. Neither section 9 of the Convention on the Privileges and Immunities of the United Nations nor sections 11 and 12 of the Convention on the Privileges and Immunities of the Specialized Agencies contains a specific reference to the subject. However, section 1 of the Headquarters Agreement of 26 June 1947 between the United States and the United Nations regulates the matter in some detail. 102/ According to these provisions the United Nations may establish and operate in the headquarters district its own short-wave sending and receiving radio broadcasting facilities, including emergency link equipment, which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by

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100/ Ibid., vol. 414, p. 245 (ONUC Agreement), and vol. 492, p. 74 (UNFICYP Agreement).

101/ See Hudson, International Legislation, pp. 486-516.

102/ Legislative Texts ..., p. 206.

applicable United States regulations) for radio-telegraph, radio-telephone, radio-telephoto and similar services. The same section contains a series of technical provisions and provisions concerning related facilities.

140. The United Nations has concluded similar agreements with the Swiss Government; 103/ with Thailand concerning ECAFE 104/ and with Ethiopia concerning ECA. 105/ The Agreement concerning ECAFE also provides for the operation of telecommunications circuits and of radio services.

141. In addition to these provisions contained in general host agreements, the United Nations has made arrangements, usually on the basis of an exchange of letters, for the operation of United Nations radio stations in a number of countries. 106/ In 1955, an aide mémoire was prepared by the Office of Legal Affairs setting out the essential legal points which needed to be considered before telecommunication operations or negotiations could be undertaken in any given country. 107/

142. The aide-mémoire referred to article 26 of the International Telecommunication Convention adopted at Buenos Aires in 1952, article XVI of the United Nations/ITU Agreement and resolutions 240 (III) and 460 (V) whereby the General Assembly approved the establishment and operation of the United Nations telecommunications system. In particular, the document contained a model text for inclusion in agreements concerning United Nations administrative centres, which has since been reproduced in a number of such instruments. 108/

143. As we have seen, ITU has resolutely opposed the establishment of a telecommunication network for the specialized agencies. The United Nations had requested that traffic of the specialized agencies should be carried on its own network. The ITU Conference held at Buenos Aires in 1952 decided that in normal circumstances the United Nations telecommunications network should not carry the traffic of the specialized agencies in competition with existing commercial telecommunications networks. ITU confirmed that position at the Montreux Conference in 1965.

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103/ Exchange of letters dated 22 October and 4 November 1946, Legislative Texts ..., vol. I, p. 202.

104/ Ibid., vol. I, p. 227.

105/ Ibid., vol. I, p. 233.

106/ See "United Nations Telecommunication System" in Everyone's United Nations, United Nations publication, Sales No. E.85.I.16.

107/ Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118/Add.1), pp. 262 ff.

108/ Yearbook ... 1967, vol. II, pp. 262 ff.

144. However, some communications of the specialized agencies concerning matters of interest to the United Nations (United Nations Development Programme (UNDP), World Food Programme)) are considered as communications of the United Nations and, as such, are carried by the United Nations network. In 1971, traffic originating in Geneva used by the specialized agencies with regard to matters concerning the United Nations accounted, in terms of the number of words, for more than double the traffic of the United Nations proper. 109/

145. The effect of the restriction we referred to is even less noticeable following the signing, on 3 August 1972, of a contract regarding the leasing of a telex line between New York and Geneva. This line is reserved for specialized agencies of the United Nations and uses a submarine cable and overland lines. It is designed to replace the existing system between the two cities and will be available to specialized agencies, and not only to the United Nations, for traffic authorized under ITU resolution 26. There is no doubt that this new link will enable the specialized agencies to enjoy the same benefits as are accorded to the United Nations in the field of telecommunications. 110/

146. The trend we have noted among international organizations towards trying to secure for themselves greater independence for their communications, contrasts with the attitude of States which are anxious to guarantee their own security. These two trends are constantly vying with one another. On the one hand, the internal development of international organizations prompts the latter increasingly to try to highlight their international character, their own personality as distinct from that of the member States of which they are composed and, as a result, to show that they are not answerable to, nor dependent upon the services of, the State.

147. States, for their part, cannot remain indifferent to the prospect of seeing international organizations replace them in the exercise of functions that traditionally have been within their exclusive competence.

148. Both theory and current practice seek to strike a balance between the two trends, whereby the fundamental interests of both parties concerned would be recognized.

149. At first glance, international organizations would seem to have the advantage over States in so far as official communications are concerned. Article 27, paragraph 1, of the Vienna Convention on Diplomatic Relations, which as we have said applies also to international organizations, states that "the receiving State shall permit and protect free communication on the part of the mission for all official purposes." Thus so long as the State is informed of the official nature of the communications, such communications are protected. This, of course, does not present any major problem; all that is needed is some simple external identifying marks. The difficulty used to arise over what was to be understood by "official purposes". Uncertainty on this matter was dispelled after the Vienna

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109/ See Jean Duffar, op. cit., p. 224.

110/ Ibid., p. 224.

Convention on Diplomatic Relations was adopted, since it emphasizes clearly, once again, the functional nature in defining the term. Indeed, article 27, paragraph 2, states:

> "2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions".

150. This provision, which applies to diplomatic missions, applies with all the more reason to international organizations. The functional requirement alone defines the extent of the official nature of the correspondence. All communications of international organizations are considered official in so far as the international organizations themselves confer this character upon them.

151. So far, only the United Nations has felt the need to have its own means of communication, because the nature of its functions place upon it a far-reaching and highly delicate global responsibility. Obviously, in times of serious crisis the United Nations would need to be sure that it would not be cut off as a result of an interruption in public communications systems. It is equally obvious that, although this is desirable in the case of the United Nations, it does not appear to be equally desirable for each and every international organization.

152. Once they are covered by the diplomatic régime, which permits international organizations to secure the inviolability of all their communications since they are all considered official and consequently inviolable without distinction whatsoever, like those of diplomatic missions, it would seem logical that international organizations should seek to establish their own communications and telecommunications network so as to be totally free of control by and dependence on States.

153. Such a situation, naturally, must give rise to alarm on the part of States which feel that if they cannot control and monitor the means of communication, the latter may be used by interests which are contrary to those of a State which is acting as host to an international organization. That, it seems, is what would prompt a State to seek ways of preserving and guaranteeing its security.

154. In this regard, the Vienna Convention on Diplomatic Relations does not establish a system that really meets the security requirements of States; its system is not considered entirely effective. As we know, this is the régime that also applies to international organizations. Some States apply what they consider a customary rule, and open diplomatic bags, to the detriment of the principle of inviolability, whenever they feel that the external appearance of the bag gives rise to suspicion concerning its content. 111/ The Vienna Convention on Consular Relations embodies such a rule, but only in connection with consular bags. Article 35, paragraph 3, of this Convention provides that:

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111/ See P. Cahier, op. cit., p. 214.

"... if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of a sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin".

155. On the other hand, however, the Vienna Convention on Diplomatic Relations embodies the principle of absolute inviolability of communications. It does not provide for any exceptions to this principle. Not only does the receiving State have the obligation to protect the freedom of diplomatic communications, but in all cases, it is also required to refrain from opening, intercepting or trying to decipher them. 112/

156. The International Law Commission did not consider it appropriate, in the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, to close the loopholes in the Vienna Convention in this area. After extensive discussions, it decided to include the exception to the principle, but only in the case of the consular bag, in the same terms as this is provided for in article 35, paragraph 3, of the Convention on Consular Relations, quoted above.

157. The Commission's draft article 28, which takes up the provision contained in the Vienna Convention on Consular Relations, has been considered the key provision of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Paragraph 2 of this draft article reproduces the wording of article 35, paragraph 3, of the Vienna Convention.

158. The Commission explains its position in this regard by stating that "while the protection of the diplomatic bag is a fundamental principle for the normal functioning of official communications between States, the implementation of this principle should not provide an opportunity for abuse which may affect the legitimate interests of the receiving or transit States". 113/ It then adds, with regard to non-discrimination and reciprocity, that "nothing precluded States from introducing by agreement, in their mutual relations, other practices regarding the diplomatic bag. In particular, they could agree to submit the consular bag to the diplomatic bag régime or vice versa". 114/

159. With regard to international organizations, the latter solution has, in fact, been adopted. A series of instruments provide for the treaty approach in

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112/ Ibid., p. 213.

113/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10), p. 110, para. (8).

114/ Ibid., p. 110, para. (10).

guaranteeing the security of the State, either through a specific agreement on communications or through an agreement on security in general.

160. As an example from the first category, we may cite the Convention on the Privileges and Immunities of the Specialized Agencies, which states in the third paragraph of section 12 that "nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency".

161. It is interesting to note that the corresponding provision of the Convention on the Privileges and Immunities of the United Nations, namely, section 10, contains no reference to the possible adoption of security precautions.

162. Most specialized agencies, and IAEA, have not formally adopted security precautions as envisaged in section 12 of the Convention on the Privileges and Immunities of the Specialized Agencies. In accordance with airport security regulations, however, FAO pouches arriving from certain points have been subject to X-ray examination.

163. A number of WHO agreements are subject to the condition that such agreements shall not derogate or abridge the right of the host Government to take the precautions necessary to protect the security of the State. State authorities are, none the less, obliged, whenever they deem it necessary to adopt measures for the protection of security, to approach WHO as rapidly as circumstances allow, in order to determine by mutual agreement the appropriate measures. Likewise, WHO is required to collaborate with the authorities of the host Governments to avoid prejudice to security because of WHO activities.

164. Section 40 of the ICAO Headquarters Agreement with Canada provides that nothing in the Agreement "shall be construed as in any way diminishing, abridging, or weakening the right of the Canadian authorities to safeguard the security of Canada, provided the organization shall be immediately informed in the event that the Canadian Government shall find it necessary to take any action against any person enumerated in the Agreement". 115/

165. As an example from the second category, i.e. instruments referring to security in general texts and not solely with respect to communications, we may cite the Agreement with Switzerland relating to the headquarters of ILO, article 25 of which reads as follows:

> "1. Nothing in the present Agreement shall affect the right of the Swiss Federal Council to take the precautions necessary for the security of Switzerland.

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115/ A/CN.4/L.383/Add.2, p. 30, paras. 118-120.

2. If it considers it necessary to apply the first paragraph of this Article the Swiss Federal Council shall approach the International Labour Organisation as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the interests of the International Labour Organisation.

3. The International Labour Organisation shall collaborate with the Swiss authorities to avoid any prejudice to the security of Switzerland resulting from its activity." 116/

166. Similar provisions are to be found in article 25 of the Agreement between Switzerland and WHO; 117/ article 24 of the Agreement between Switzerland and WMO; 118/ section 47 of the Agreement between Austria and IAEA; 119/ and article 14 of the Agreement between Argentina and the Pan American Sanitary Bureau. 120/

167. More recently, there has been a notable tendency to change the mechanism for the adoption of restrictive measures. The trend is to replace the treaty régime of mutual agreement between organizations and States with the granting of exclusive power to each member State to take any precautionary measures in the interest of its security, in other words, to adopt the measures unilaterally.

## D. Draft articles 13 to 16

168. In accordance with the above paragraphs, the Special Rapporteur proposes the following wording for part IV of the draft articles relating to publication and communications facilities granted to international organizations.

### Part IV

### Publications and communications facilities

### Article 13

International organizations shall enjoy in the territory of each State party (to this Convention) the free circulation and distribution of their publications and public information material necessary for their activities,

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116/ Legislative Texts ..., vol. II, pp. 142 and 143.

117/ Ibid., p. 259.

118/ Ibid., p. 313.

119/ Ibid., p. 342.

120/ Ibid., pp. 292 and 293.

including films, photographs, printed matter and recordings prepared as part of the public information programme of an organization and exported or imported for display or re-transmission, as well as books, periodicals and other printed matter.

Article 14

International organizations shall enjoy, in the territory of each State party (to this Convention) in respect of such organizations, for their official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic missions, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone, telefax and other communications, and press rates for information to the press, cinema, radio and television. However, the international organization may install and use a wireless transmitter only with the consent of the host State.

Article 15

The official correspondence and other official communications of an international organization shall be inviolable.

Official correspondence and official communications mean all correspondence and communications relating to an organization and its functions.

Article 16

International organizations shall have the right to use codes and to dispatch and receive their official communications by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags under the provisions of the multilateral conventions in force governing matters relating to the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

Article 17

None of the provisions of this chapter shall affect the right of each State party (to this Convention) to adopt the necessary precautions and appropriate measures in the interest of its security.

Note: The words "in this Convention" have been placed in brackets in order not to prejudge the final form of the draft articles.

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# FIFTH REPORT ON RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (SECOND PART OF THE TOPIC)

by

Mr. Leonardo DIAZ-GONZALEZ, Special Rapporteur

## Corrigendum

Chapter III D: Title and Contents

For: Draft articles 13 to 16

Read: Draft articles 13 to 17

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